

amendment is available on an interim, subject to true-up basis as set forth in Section 10.1.

G. Line Splitting: The Optional Line Splitting Amendment-Appendix to Attachment 25: xDSL: This revision provides that SWBT will make available in Missouri the prices, terms, and conditions of the Texas line splitting arbitration, once final, on an interim, subject to true-up basis to the permanent prices, terms, and conditions to be set by the Commission in Case No. TO-2001-440 or other appropriate docket. As SWBT made clear at the January 31, 2001, on-the-record proceeding, it reserves the right to contend, in Case No. TO-2001-440 that line splitting as contemplated in the Texas arbitration should not be required in the M2A. T. 3240-41.

SWBT made final revisions to the M2A on February 28, 2001. Those revisions clarified the true-up process contemplated by the Commission in its Interim Order and corrects an error in the UNE pricing schedules. See generally, Response of SWBT to the Staff Report, Feb. 28, 2001.

B. CONCLUSIONS OF LAW

Three state commissions, Texas, Kansas, and Oklahoma, have each approved model interconnection agreements in their states. While Congress may not have explicitly contemplated the M2A when enacting the 1996 Act, there is nothing in state or federal law that prevents this Commission from reviewing the M2A for compliance with section 271(c). Moreover, by approving the M2A, this Commission can transform the terms of the M2A into "concrete and specific legal obligation[s]" to furnish checklist items and thereby demonstrate that SWBT "is ready to furnish, the checklist item[s]." Texas Order ¶ 21.

The fact that the M2A contains interim rates is no barrier to our approval. The FCC has made clear that "the mere presence of interim rates

will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set." Texas Order ¶ 88 (approving SWBT's Texas application despite interim rates for interconnection).¹⁶ The Commission finds that the M2A reflects a reasonable effort under the circumstances to set interim rates "in accordance with the Act and the FCC's rules." Id. ¶ 89.

The interim solution is reasonable because the rates are cost-based, this Commission has initiated cost proceedings that will be completed expeditiously in Case Nos. TO-2001-438, TO-2001-439, TO-2001-440, and TT-2001-298, and SWBT has agreed to abide by the Staff's true-up mechanism. See, id. ¶¶ 89-90.

Although SWBT no longer offers operator services and directory assistance as unbundled network elements, it does offer these services to CLECs on a nondiscriminatory basis at market-based prices. SWBT's Joint Aff. ¶¶ 47-48; UNE Remand Order, 15 FCC Rcd at 3906, ¶ 473.

Version 1.7 of SWBT's performance remedy plan represents the latest and most accurate set of performance measurements developed. See, SWBT's Dysart Reply Aff. ¶¶ 11-18 and Attach. C. No commenter disputes that Version 1.7 represents a preferable set of performance measurements for implementation with the M2A. The Commission concludes, therefore, that Version 1.7 should be implemented as part of the M2A.¹⁷

¹⁶ See also Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, 4090-91, ¶ 258 (1999) ("New York Order").

¹⁷ The FCC has cautioned, however, that "adoption by a state of a particular performance standard pursuant to its state regulatory authority is not determinative of what is necessary to establish checklist compliance under section 271." Texas Order ¶ 55.

The Commission finds that the M2A does not discriminate against a telecommunications carrier that is not a party to the agreement and that the implementation of the M2A is not inconsistent with the public interest, convenience, and necessity. CLECs may file with this Commission any interconnection agreement that is substantively identical to the M2A and the interconnection agreement will be considered approved when filed.

Notwithstanding our approval of the M2A, nothing precludes a CLEC from negotiating an alternative agreement outside of the terms and conditions of the approved model. In such circumstances, SWBT would be bound to offer the CLEC such terms and conditions in compliance with the relevant requirements under sections 251 and 252.¹⁸

III. FACILITIES-BASED COMPETITION IN MISSOURI -- TRACK A

A. FINDINGS OF FACT

Several Missouri CLECs provide facilities-based service to both business and residential customers in Missouri. WorldCom, for example, provides service over its own facilities to many thousands of Missouri business and residential customers. See, SWBT's Tebeau Aff. ¶ 42. AT&T also provides facilities-based service to business subscribers, along with some service to residential customers. Id. ¶ 40. Both of these carriers operate pursuant to an approved interconnection agreement. Id. ¶¶ 40, 42.

SWBT estimates that CLECs serve approximately 13 percent of access lines in SWBT's Missouri serving area. A few carriers contend that SWBT overstates the amount of local competition in Missouri. Response of

¹⁸ The Commission notes that, consistent with the T2A, the M2A allows CLECs in Missouri to elect under 47 U.S.C. § 252(i) to pick and choose portions of the M2A. Attachment 26 of the M2A explains what sections in the M2A are "legitimately related" to others for purposes of allowing a CLEC to obtain access to any individual interconnection, service, or network element arrangement under the M2A.

McLeodUSA to Question and Answer Session of October 11-12, 2000; and Comments to Interim Contract Report of Ernst & Young at 17; T. 2296-2297 (AT&T's Turner). Based on data collected from CLECs, Staff estimates that CLECs serve approximately 12 percent of access lines in SWBT territory. Staff's Voight Aff. ¶¶ 15-24; T. 3097-98 (Staff's Voight).

Although there is a disagreement among the parties as to the exact number of access lines served, the Commission finds that the Staff's estimates based on data collected from Missouri CLECs is consistent with SWBT's estimates, and therefore, the Commission finds that CLECs serve approximately 12 percent of access lines in SWBT territory.

B. CONCLUSIONS OF LAW

"Track A" of section 271 requires SWBT to demonstrate that it has entered into interconnection agreements with at least one carrier that qualifies as a "competing provider of telephone exchange service" that is providing service "to residential and business subscribers" either "exclusively over [its] own . . . facilities or predominantly over [its] own . . . facilities in combination with the resale." 47 U.S.C. § 271(c)(1)(A). For purposes of Track A, a carrier that provides service over UNEs leased from SWBT is providing service over its "own facilities." See, Michigan Order,¹⁹ 12 FCC Rcd at 20594, ¶ 94.

The Attorney General contends that the M2A cannot be used to satisfy Track A. See, State of Missouri Post Oct. Hearing Comments at 3. AT&T and WorldCom are "Track A" carriers insofar as they provide facilities-based service to business and residential customers. Because these carriers each have their own approved interconnection agreements with

¹⁹ Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543 (1997) ("Michigan Order").

SWBT, the Commission does not need to address the Attorney General's argument that the M2A cannot be used to satisfy Track A.

Because the FCC has concluded "that a new entrant" need not "serve a specific market share" to qualify as a Track A carrier, id. at 20585, ¶ 77, there is also no need for the Commission to resolve the dispute regarding the accuracy of SWBT's estimates of the extent of local competition in Missouri.

IV. THE COMPETITIVE CHECKLIST – SECTION 271(B)

A. FINDINGS OF FACT

(1) Checklist Item 1: Interconnection

Section 251(c)(2) requires SWBT to provide requesting carriers interconnection to SWBT's network at any technically feasible point, at least equal in quality to that provided by SWBT to itself, and on nondiscriminatory rates, terms, and conditions. 47 U.S.C. § 251(c)(2); Texas Order ¶ 61.

The M2A together with Commission-approved interconnection agreements establish several methods of interconnection for requesting carriers. See, SWBT's Deere Aff. ¶ 13; M2A Attach. 11 – Network Interconnection Architecture; M2A Attach. 11 – App. Network Interconnection Methods § 2.0. Each of these interconnection arrangements is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. See, SWBT's Deere Aff. ¶¶ 19-20. SWBT also offers interconnection at any single, technically feasible point within a LATA in compliance with paragraph 78 of the Texas Order. See, SWBT's Sparks Reply Aff. ¶¶ 28-29. In addition to these standard offerings, CLECs may request custom-tailored interconnection

arrangements through a Special Request process, which allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. See, SWBT's Deere Aff. ¶¶ 28, 77-81; SWBT's Sparks Aff. ¶ 57; M2A Attach. 6 - UNE § 2.22.

Interconnection Trunking

AT&T claims that there is "at least a potential inconsistency between SWBT's reported data for average interconnection trunk installation interval (PM 78) and its data for percent missed due dates (PM 73)." AT&T's Fettig Test. at 27. Data reported in PM 73 capture the number of all trunks provisioned. On the other hand, data captured in PM 78 capture all trunk orders that have a due date within the standard interval (20 days) and were not a customer-caused miss. See, SWBT's Dysart Reply Aff. ¶¶ 38-40 (providing table reconciling data reported under PM 73 with those reported under PM 78). Thus, the two measures accurately capture the data they were designed to report.

SWBT's performance under PM 73 shows that it has provided Missouri CLECs parity or better trunk installation in 11 of the 12 months preceding November 2000, thus demonstrating nondiscriminatory service. SWBT's Dysart Post Nov. Hearing Aff. ¶ 32. SWBT has met or exceeded the one-percent benchmark for PM 70 (Percent Trunk Blockage) in each of the 12 months preceding November 2000, and has met or exceeded the benchmark for PM 71 (Common Transport Trunk Blockage (Percent of Trunk Groups with > 2 Percent Blockage)) in 11 of the 12 months preceding November 2000. Id. ¶ 34. SWBT thus has provided Missouri CLECs a meaningful opportunity to compete.

AT&T seeks to measure SWBT's performance under a standard for PM 73 that neither was in effect for the relevant period nor is required by the FCC for section 271 approval. In this respect, AT&T claims that SWBT's performance for timely trunk provisioning would have been deficient in some

of the 12 months preceding November 2000 if measured under a new benchmark standard of 95 percent for PM 73 (Percentage of Missed Due Dates - Interconnection Trunks), which was instituted in Texas (but not Missouri) on August 1, 2000, as Version 1.7 of SWBT's performance measurements. See, AT&T's Fettig Test. at 29; AT&T's Post Oct. Hearing Comments at 6-8. As AT&T recognizes, SWBT has met the parity standard that was in force for PM 73 "in most of these months." AT&T's Fettig Test. at 29 ; See also, AT&T's Post Oct. Hearing Comments at 6; T. 2945 (AT&T's Cowlshaw).

AT&T also suggests that it is unclear whether SWBT's trunk blockage measure (PM 70) accurately reflects CLEC experience. See, AT&T's Fettig Test. at 31. The Texas Commission's Performance Measurements Modifications Order (which established Version 1.7 of SWBT's performance measurements, effective August 1, 2000) directs that PM 70 (Percentage of Trunk Blockage) be modified to encompass 20 days of data for each month, excluding weekends and holidays. AT&T claims that SWBT's reporting under the "official study week" approach reflected in the current Version of PM 70 may not be representative of the blockage CLECs experienced throughout the month.

The Commission's adoption of Version 1.7 should not materially alter SWBT's results reported under the current Version of PM 70, which reflects long-accepted industry practice. See, SWBT's Dysart Reply Aff. ¶ 46. SWBT's aggregate performance effectively met or exceeded the one-percent benchmark for PM 70 for all Missouri CLECs in each of the 12 months preceding November 2000. SWBT's Dysart Post Nov. Hearing Aff. ¶ 34.

AT&T claims that SWBT has reported excessive blocking to TCG in the St. Louis market under PM 70 in June and July 2000. AT&T's Fettig Test. (Perf. Meas.) at 30. SWBT determined that out-of-service trunks caused blocking on a few TCG trunk groups in St. Louis during those

two months, and those problems have now been fully corrected. SWBT's Dysart Reply Aff. ¶ 44.²⁰

AT&T questions SWBT's policies regarding the FCC's requirement that a CLEC "ha[ve] the option to interconnect at only one technically feasible point in each LATA." Texas Order ¶ 78. See, AT&T's Comments at 19-32; AT&T's Post Oct. Hearing Comments at 8-13; See also, Gabriel's Cadieux Aff. at 25-32. In light of paragraph 78 of the Texas Order, SWBT added to the M2A the option for a CLEC to interconnect at a single, technically feasible point within the LATA, tailored to meet the CLEC's need. See, SWBT's Sparks Reply Aff. ¶¶ 28-29. The relevant language of the additional clause was based upon that which the FCC approved in the Texas Order (¶ 78 n.174), and was also similar to that approved by both the KCC and OCC. See, T. 3003 (SWBT's Sparks). Based on further discussions with Staff, Gabriel and other CLECs, SWBT modified this proposed language (by adding revisions proposed by Gabriel) in order to alleviate any CLEC concerns about their ability to interconnect at a single, technically feasible point. As Staff testified at the November 9, 2000 question and answer session, this offering with the revised language, which has now been incorporated into the M2A,²¹ meets checklist item (i). See, T. 3015-16

²⁰ Discussed at the November 8-9, 2000, hearing was the extent to which SWBT continues to record as a "miss" under PM 74 (Average Delay Days for Missed Due Dates - interconnection Trunks) the days after SWBT is prepared to complete an order, but the CLEC is unprepared to accept it. SWBT's Dysart Post Nov. Hearing Aff. ¶ 36. SWBT explains that, if the CLEC is unprepared to accept the completion on the due date, delay days thereafter are excluded from the results for PM 74, as permitted by the "Customer Caused Misses" exclusion stated in the business rules (for purposes of PM 73, the missed due date is not recorded as a miss, in accordance with the same exclusion). Id. However, if SWBT is unprepared to complete the order on the due date, but becomes ready thereafter, the days following that point of readiness through the date of actual completion and CLEC acceptance have not been excluded from the data for PM 74 (i.e., they have been charged to SWBT as "delay days"). Id. In light of the exclusion to which it is entitled, these days should not be charged as SWBT-caused delay days, and SWBT states that it is attempting to modify its Work Force Administration system to correctly capture this information in the future. Id.

²¹ Attachment 11: Network Interconnection Architecture, paras. 1.1 - 1.3.

(Staff's Voight). Gabriel concurred, stating that with its proposal incorporated "we believe there's no longer an issue" with the single point of interconnection ("POI"). T. 2994 (Gabriel's Cadieux). McLeodUSA stated that it was "fine" with the language, T. 3018 (McLeodUSA's Kruse), and NEXTLINK said that it "concurs," T. 3018 (NextLink's Pomponio). See generally, SWBT's Post Nov. Hearing Br. at 29-31.

Only AT&T raises a further concern. In AT&T's example, the calling and called parties are located in the same local calling area, but the single point of interconnection is in another exchange in the same LATA, which could be hundreds of miles away. See Staff's Voight Post Oct. Hearing Aff., Sched. I-4 (attached to Staff's Post Oct. Hearing Comments). On such calls, AT&T proposes to pay SWBT only the reciprocal compensation rate even though SWBT would be required to back-haul the traffic to and from AT&T's distant single point of interconnection. See, AT&T's Post Oct. Hearing Comments at 9-10, 13, 15; T. 3005-07 (AT&T's Turner). SWBT argues that a CLEC should be responsible for paying the cost of transporting the call between SWBT's end office and the point of interconnection in the other local exchange.

Collocation

SWBT makes available caged, shared-cage, and cageless physical collocation, all at the option of the CLEC. See, SWBT's Sparks Aff. ¶¶ 46-54. SWBT also makes available adjacent collocation and virtual collocation and will make available any other physical collocation arrangement that has been deemed technically feasible on another incumbent LEC's premises, unless such an arrangement is not technically feasible on SWBT's premises or there is a lack of space. See, id. ¶¶ 55, 57, 70; SWBT's Deere Aff. ¶ 22.

The available monthly performance data show that SWBT routinely processes CLECs' requests for collocation within the applicable interval (PM 109). See, SWBT's Dysart Aff. ¶ 44; SWBT's Dysart Reply Aff. Attach. A.; SWBT's Dysart Post Nov. Hearing Aff. Attach. A. For example, SWBT successfully processed, designed, developed quotes, and responded within specified timelines for 97.3 percent (476) of the 489 Missouri CLECs' applications for collocation facilities submitted over the 11-month period ending in April 2000. SWBT's Dysart Aff. ¶ 44. SWBT likewise regularly meets its due dates for installation of collocation within the applicable benchmark (PM 107). See, id.; SWBT's Dysart Reply Aff. Attach. A; SWBT's Dysart Post Nov. Hearing Aff. Attach. A.

When SWBT first filed its M2A on June 28, 2000, SWBT included appendices that set forth the standard terms and conditions upon which it would offer physical and virtual collocation arrangements to CLECs in Missouri, once the M2A was approved. These appendices also included statewide average rates for collocation arrangements. See, T. 2823 (SWBT's Hughes).

At the question and answer session on October 11-12, 2000, SWBT committed to the Commission that it would file a proposed tariff under which SWBT would offer collocation to CLECs in Missouri. On October 24, 2000, SWBT filed proposed collocation tariffs in the Commission's Case No. TT-2001-298. These tariffs contain standard terms and conditions applicable to SWBT's provision of collocation to CLECs in Missouri that are different from the terms and conditions contained in the original collocation appendices to the M2A. SWBT alleges these tariffs contain statewide average prices for physical and virtual collocation using the TELRIC methodology. See, T. 2823 (SWBT's Hughes). However, the Commission has suspended the collocation tariffs and established a procedural schedule

including evidentiary hearings to determine the appropriate collocation prices, terms, and conditions.

In the meantime, SWBT made revisions to the M2A to include on an interim basis, the collocation terms and conditions identical to the terms and conditions in SWBT's collocation tariff in the state of Kansas, and the prices identical to the Texas collocation tariff based on the TELRIC methodology. See, Staff Report on Compliance with the Commission Interim Order, filed Feb. 23, 2001, p. 4. These prices are subject to a limited true-up once permanent rates based on Missouri costs are established in Case No. TT-2001-298. See, T. 3026-27 (SWBT's Hughes); See also, Staff Report on Compliance with Commission Interim Order Regarding the Missouri Interconnection Agreement, pp. 3-4; and See, M2A, Attach. 6 - App. Pricing - UNE.

The FCC has approved interim prices in Texas where that state commission had a schedule in place for setting permanent prices. The FCC has also approved a Kansas agreement that is similar to the Texas agreement with a few modifications to the terms and conditions. In addition, the CLECs and SWBT have been operating under the Texas prices in that state for a substantial period of time. In order to move competition forward, the Commission finds that until permanent collocation prices are set in Missouri by a final decision in Case No. TT-2001-298, it is appropriate to use the Texas prices subject to a limited true-up period. Furthermore, during the Commission's question and answer session on November 8, 2000, none of the parties indicated that they would object to Texas collocation prices with the terms and conditions of the Kansas agreement.

(2) Checklist Item 2: Nondiscriminatory Access to Network Elements

Access to UNEs Generally

The M2A offers CLECs access to dark fiber, sub-loop unbundling, local switching, tandem switching, signaling networks, call-related databases, line conditioning, and information on loop qualification. SWBT's Sparks Aff. ¶¶ 79-82. The M2A also provides CLECs a means to obtain any additional UNEs required by the FCC or identified through arbitration. Id. ¶ 74; M2A Attach. 6 - UNE § 14.5. The M2A includes the provision of all the new requirements in the UNE Remand Order that became effective on February 17, 2000, and May 17, 2000. See SWBT's Sparks Aff. ¶ 75-82; New York Order, 15 FCC Rcd at 3967, ¶ 31, 4021-4022, ¶ 140 n.420; Texas Order ¶ 29.

UNE Combinations

The M2A's UNE combination provisions mirror those contained in the T2A. SWBT combines particular network elements that are not already combined, including new loop-to-switch-port combinations (the UNE Platform or UNE-P) and, under certain conditions, loop-to-interoffice-transport combinations (the Enhanced Extended Loop or EEL). SWBT's Sparks Aff. ¶¶ 90, 92-95; See also, SBC/Ameritech Merger Order,²² 14 FCC Rcd at 14875, ¶ 393 (provision of UNE Platform for service to residential customers).

SWBT will combine UNEs for CLECs at rates set by this Commission. See, SWBT's Sparks Aff. ¶¶ 90, 135-139. SWBT has shown that it has developed methods and procedures for new combinations of specific UNEs. See, id. ¶¶ 94-95; M2A Attach. 6 - UNE § 14.7.

²² Memorandum Opinion and Order, Applications of Ameritech, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999) ("SBC/Ameritech Merger Order").

SWBT does not separate requested UNEs that SWBT currently combines in its network unless asked to do so by a CLEC. SWBT's Sparks Aff. ¶ 89. Moreover, SWBT has made its combinations available to all CLECs in Missouri on a legally binding basis through the M2A and arbitrated interconnection agreements. Id. ¶¶ 89-90, 92-95; See, M2A Attach. 6 - UNE §§ 14.2, 14.3, 14.4, 14.7.

When a CLEC orders UNEs that are already combined, SWBT does not charge a Central Office Access Charge (COAC). SWBT's Sparks Aff. ¶¶ 137-138; M2A Attach. 6 - UNE § 14.2. For combinations of UNEs that are not contained in the pricing requirements of sections 251 and 252 because they do not already exist in SWBT's network and, therefore, require new work to assemble, SWBT charges the COAC in addition to other applicable UNE charges. SWBT's Sparks Aff. ¶ 137. SWBT does not require CLECs to own or operate any equipment to combine SWBT's UNEs. Id. ¶ 97.

SWBT makes various collocation arrangements - including caged, shared-caged, cageless, and virtual collocation - available to CLECs for interconnection and access to UNEs. See, SWBT's Sparks Aff. ¶¶ 33, 46-72; M2A Attach. 13 - Ancillary Functions; See, Texas Order ¶ 217. Where space for physical collocation is not available, SWBT permits CLECs to collocate their equipment in adjacent controlled environmental vaults or similar structures, under the same nondiscriminatory terms as traditional physical collocation. SWBT's Sparks Aff. ¶ 55. In addition, SWBT will provide interested CLECs access to a secured frame room or cabinet (if space is not available for a room) that is set aside for accomplishing the necessary connections. Id. ¶¶ 96-98. The various collocation options, the secured frame option, and SWBT's offer to combine certain UNEs for CLECs provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities.

Facilities-based CLECs can use these same methods to combine SWBT's network elements with their facilities. In addition, CLECs may request other technically feasible methods of access that are consistent with the provisions of the Act and other governing law. See, SWBT's Deere Aff. ¶¶ 78-81; M2A Attach. 6 - UNE § 2.22; Texas Order ¶ 217.

Line Sharing

In the M2A, SWBT makes line sharing available to CLECs on an interim basis, subject to a limited true-up, on the same terms and conditions as it offers in the state Texas. See, Staff Report on Compliance with Commission Interim Order, Feb. 23, 2001, p. 9; See also, Optional Appendix to Attachment 25; High Frequency Portion of the Loop. The Texas terms for line-sharing have been approved by the FCC. In addition, the Commission has opened Case No. TO-2001-440 for the purpose of establishing permanent prices, terms, and conditions for line sharing and line splitting in Missouri. On February 28, 2001, SWBT revised the line-sharing provision of the M2A to include establishment of permanent prices in accordance with the final decision in the Commission's Case No. TO-2001-440. The Commission finds it is reasonable for line sharing in Missouri to be offered in the interim, subject to a limited true-up, on the same prices, terms, and conditions as SWBT offers in the state of Texas.

SWBT presented evidence of compliance with the FCC's Line Sharing Order. SWBT's Chapman Aff. ¶ 53. According to the testimony, SWBT complied with that order by May 29, 2000, a week in advance of the FCC's implementation date. Id. at ¶ 87. In addition to the optional amendment in the M2A, CLECs may obtain terms and conditions for xDSL-capable loops and line sharing from SBC's 13-state generic interconnection agreement. Id.

Line Splitting

The Texas Commission has addressed the issue of line splitting through the process of an arbitration.²³ The proceeding in Texas is not yet final pending appeal. Even so, the Oklahoma Commission made a condition of its positive recommendation for approval of SWBT's application for interLATA authority in that state (and the FCC subsequently approved SWBT's interLATA application for Oklahoma which included that condition) that the terms and conditions of the Texas line-splitting arbitration, once final, be made available for line splitting in Oklahoma as an interim measure. The Commission determines that this is a reasonable approach.

The M2A provides for line splitting on an interim basis, in accordance with the Texas Commission's decision in Arbitration Case No. 22315. See Staff Report on Compliance with Commission Interim Order, Feb. 23, 2001, p. 9; See also, Optional Appendix to Attachment 25; Line Splitting. The M2A also provides that the interim rates will be subject to a limited true-up with permanent rates to be set in the Commission's Case No. TO-2001-440.

Intellectual Property

SWBT offers the same terms and conditions to CLECs in Missouri that the FCC approved in the Texas Order. Texas Order ¶ 230. SWBT's proposed modifications to the M2A, contained in Exhibit A to Donald Palmer's Reply Affidavit, include SWBT's commitment to "use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each unbundled network element necessary for CLECs to use such unbundled element in the same manner as SWBT."

²³ See TPUC Docket No. 22315.

SWBT's Palmer Reply Aff. Exh. A, § 7.3.3.1; See also, T. 2487 (SWBT's Palmer).

Pricing

The M2A prices for the standard UNEs that CLECs utilize the most in Missouri were established by this Commission through arbitrations in Case Nos. TO-97-40 and TO-98-115. Staff has continually argued that these rates are the proper TELRIC rates to use in Missouri. See, T. 3022 (Staff's Stueven). In addition, these rates have subsequently been incorporated into many of the Missouri approved interconnection agreements between SWBT and CLECs. Although SWBT has appealed the two arbitration decisions, SWBT has committed in the M2A to follow the Commission's pricing decisions in those arbitrations, even if SWBT is successful on appeal. M2A General Terms and Conditions § 18.2; See also, Response of SWBT to WorldCom's Emergency Motion to Stay the Proceeding, filed Jan. 17, 2001, ¶ 6; and see, T. 2419 (AT&T's Bourianoff).

SWBT's cost studies in Case No. TO-97-40 have been determined by this Commission to fully comply with TELRIC. See, e.g., Final Arbitration Order, Case No. TO-97-40 (MO PSC July 31, 1997) (Attach. C - Cost and Pricing Report) (1997 Final Arbitration Order). In Direct Testimony filed on September 18, 1996, in Case No. TO-97-40, SWBT witness J. Michael Moore presented SWBT's TELRIC cost studies supporting the nonrecurring and recurring rates SWBT proposed for UNEs. Schedules 2-7, 10. Mr. Moore explained that, in accordance with sections 251(c)(3) and 252(d)(1) of the Act and the FCC's TELRIC principles, these studies identify the entire quantity of the network elements provided. All costs associated with the network elements are included, and those costs are only forward-looking, incremental costs. SWBT's Moore Direct Test. at 2-3, 9-12.

SWBT calculated nonrecurring costs by identifying the work groups involved and the time required to complete each activity identifying the labor costs for the personnel typically performing them, and by multiplying the time required to perform these activities by the labor costs adjusted to represent the planning period of the cost study. In the M2A, monthly recurring and nonrecurring charges (NRCs) from Case No. TO-97-40 are established on a permanent basis. See, UNE Pricing Appendix, fn. 1, p. 11. The Staff compared the Missouri, Texas, Kansas, and Oklahoma NRCs and demonstrated that in most instances, Missouri NRCs were substantially more than Texas NRCs. See, Appendix A to Staff's Updated Multi-jurisdictional Comparison of Rates, filed Feb. 14, 2001. The Commission heard testimony and arguments regarding the method of setting NRCs in the state of Kansas. In that state, a 25 percent discount was taken on NRCs, but the NRCs were not reduced below the Texas prices. This adjustment was made to bring the Kansas NRCs in line with the Texas prices. The Commission finds that it is reasonable for SWBT to adjust the Missouri NRCs in a similar manner.

The M2A as finally submitted reduces the NRCs by up to 25 percent, but not to a level below the corresponding NRC found in the Texas agreement. This adjustment was done in a similar manner as the adjustment in Kansas. See, Staff's Report on Compliance, Feb. 23, 2001, p. 5.

SWBT also modified the M2A to conform DS1 and DS3 rates to those approved in Case No. TO-97-40. SWBT's Hughes Reply Aff. ¶ 7. SWBT has agreed on a prospective basis to true-up its rates for certain cross-connects, ISDN-BRI loops, and loop conditioning to conform to a final decision in the SWBT-Covad Arbitration, Case No. TO-2000-322, the Commission's newly established case for the purpose of determining permanent rates for loop conditioning, Case No. TO-2001-439, or other appropriate cases established by the Commission in which additional TELRIC

cost study work will be performed. Id. ¶ 4, and SWBT's Response to the Interim Order, p. 3; See also, M2A, Attachment 25: DSL, Section 11.4.

Staff identified approximately 110 UNE prices²⁴ proposed in the original version of the M2A that the Commission has not previously analyzed for compliance with TELRIC standards. See, Attachment B to the Staff's Aug. 28, 2000, Response to SWBT's Updated Record. The Staff later revised its estimate and stated that only 95 of these UNEs were of first impression to the Commission. See, Staff's Summary of Evidence, Comments, and Positions, filed Dec. 26, 2000, p. 15. SWBT proposed rates for these UNEs based on what it claimed were cost studies consistent with the methodology used in Case. No. TO-97-40. See, SWBT's Hughes Reply Aff. ¶ 4. Because there has been no independent determination that SWBT's cost studies conform to TELRIC principles, the Commission finds that it is appropriate for SWBT to offer the corresponding FCC-approved Texas UNE prices on an interim basis subject to a limited true-up.

The M2A, as finally submitted on February 28, 2001, contains the Texas prices, terms, and conditions for these UNEs. In addition, the Commission has established Case No. TO-2001-438 to set permanent prices, terms, and conditions for these UNEs.

The M2A requires SWBT to provide UNEs at arbitrated rates both to CLECs providing service to business customers for two years from the date of our approval of the M2A and to CLECs providing service to residential customers for three years - assuming FCC approval of SWBT's section 271 application. SWBT's Sparks Aff. ¶ 74. The Commission rejects requests (See, e.g., WorldCom's Comments at 33; AT&T's Comments at 19), to expand

²⁴ These rates are identified in Hughes Reply Affidavit, Attachment A, with a designation "3" indicating they are based on a SWBT MO cost study using what SWBT alleges is the TELRIC cost methodology and inputs that this Commission previously approved in Case No. TO-97-40.

the pricing requirements of section 252(d)(1) to include items other than interconnection and UNEs.

In addition to the NRC reductions listed above, the Commission finds that SWBT has addressed AT&T's concern that CLECs would have to pay a \$60 NRC associated with pre-existing 2-wire analog loop and port combinations. See, T. 2318 (AT&T's Bourianoff); T. 3033 (AT&T's Kohly). SWBT witness Tom Hughes explained that SWBT would amend the pricing appendix of the M2A to clarify that SWBT would not assess NRCs for pre-existing 2-wire analog loop and port combinations, subject to true-up to a final Commission order addressing this issue in Case No. TO-98-115 or other further cost proceedings. See, T. 2670, 3025-3026 (SWBT's Hughes). A \$5 charge would apply for a mechanized service order while a \$60 charge would apply to a manual service order. T. 3034-35 (SWBT's Sparks). Mr. Hughes also submitted an attachment to the pricing appendix to the M2A, which was marked as Exhibit 136, in which SWBT documented this clarification. AT&T conceded that the proposal fully meets its concerns. See, T. 3035 (AT&T's Kohly).

The interim rates contained in the M2A are subject to a limited true-up. The Commission has four cases pending to determine permanent prices, terms, and conditions for the interim prices subject to true-up in the M2A. Because of the concern of the lack of certainty for the CLECs to establish a business plan, the Commission finds that a limited true-up period is reasonable. Therefore, the Commission determines that a true-up period that is six months retrospectively from the date of the Commission's order establishing a permanent rate is appropriate. The true-up period that has been included in the M2A is consistent with these Commission findings.

Nondiscriminatory Access to OSS

SWBT submitted substantial evidence that the same OSS systems, processes, and procedures in place in Texas are used in Missouri and across SWBT's region. See, SWBT's Lawson Reply Aff. ¶¶ 17-24. Ernst & Young attested that SWBT uses the same OSS interfaces in Missouri as it uses in Texas and throughout its five-state region. See, Ernst & Young Report of Independent Accountants. Although Sprint and WorldCom challenge this conclusion (See, Sprint's DeWolf Aff. ¶¶ 14-15; WorldCom's Comments at 4-5) the Commission is not persuaded by those claims and finds that SWBT has shown, by a preponderance of the evidence, that its OSS operate on a region-wide basis.²⁵

SWBT has established OSS performance measurements and standards with self-executing damages provisions. See generally, SWBT's Dysart Aff.; M2A Attach. 17 - Performance Remedy Plan. These measurements are sufficient to allow interested parties to monitor SWBT's performance, as well as to ensure SWBT's continued compliance with its OSS obligations. Ernst & Young certified that SWBT was accurately reporting these performance measurements. See, Ernst & Young Report of Independent Accountants, CPM Results Examinations Report at 1-2; see also, T. 2715-2717 (Ernst & Young's Dolan, Horst). Staff was "very satisfied" with Ernst & Young's evaluation. See, T. 2734 (Staff's Winter).

SWBT's OSS interfaces are presently being used at commercial volumes. Usage of all of SWBT's interfaces has increased substantially since the submission of the initial Texas application. See, SWBT's Lawson Reply Aff. ¶¶ 12-15.

²⁵ The CLECs' claims are also severely undermined by their insistence that problems they experienced while operating in Texas are relevant to the Commission's review of SWBT's OSS in Missouri. See, e.g., AT&T's Willard Test. at 61-64.

AT&T and WorldCom complain that some of these figures are not Missouri-specific. See, AT&T's Willard Test. at 61; WorldCom's Comments at 3-4. But SWBT's OSS are regional, so it is wholly appropriate for commercial volume figures to be tracked on a region-wide basis. See, SWBT's Lawson Reply Aff. ¶¶ 9-11. In any case, SWBT now reports most OSS performance measures on a state-specific basis, allowing the monitoring of Missouri performance to show that the same nondiscriminatory access to OSS functions demonstrated by SWBT in Texas is being provided to CLECs in Missouri. See, id.

The third-party test of SWBT's systems conducted by Telcordia under the auspices of the Texas Commission "provides evidence of the functionality and capacity of SWBT's OSS in several important areas." Texas Order ¶ 103. Telcordia concluded that SWBT's systems process CLEC transactions in a nondiscriminatory fashion and that they can do so at reasonably foreseeable levels of demand. See, SWBT's Lawson Post Oct. Hearing Reply Aff. ¶ 12; Telcordia Technologies, Inc., SWBT OSS Readiness Report at ES-1, 7 (Sept. 1999) (filed as Attachment A to SWBT's Lawson Aff.) (Telcordia Final Report). Comments regarding the adequacy of the test itself have been thoroughly addressed by the Texas Commission and the FCC.

Because SWBT's OSS are the same throughout its region, the findings of Telcordia in Texas are equally valid in Missouri. At this Commission's direction, Ernst & Young determined that the 1Q2000 augmented workload volumes tested in the Telcordia capacity test included Missouri commercial volumes.²⁶ Ernst & Young also testified and answered questions before this Commission in November regarding its conclusions. See T. 2702-2703 (Ernst & Young's Kelly). Staff concluded from Ernst & Young's

²⁶ Ernst & Young Interim Report, Appendix A, Item 2.

report that SWBT had sufficient capacity to handle Missouri orders. See T. 2732 (Staff's Steven). Moreover, Telcordia's recent scalability report indicates that SWBT's scalability process is adequate to account for future capacity.²⁷ See, SWBT's Lawson Reply Aff. ¶¶ 13-17.

AT&T filed a report after the technical conference stating its dissatisfaction with the conference. AT&T requested that the Commission direct SWBT and Ernst & Young to provide AT&T and other interested parties, the confidential work papers of Ernst & Young. Staff and SWBT, on the other hand, reported that Ernst & Young has provided full and detailed responses and that the conference had satisfied the requirements of the request for proposal of the Commission. The Commission relies on these reports and the evidence presented to it in its November proceeding in finding that Ernst & Young's analysis was thorough and reliable and that AT&T's concerns regarding the scalability of SWBT's OSS processes to meet capacity demands are unfounded. See, AT&T's Post Oct. Hearing Comments at 30.

SWBT's change management process (CMP) allows SWBT to notify CLECs of new interfaces and changes to existing OSS interfaces; it also provides for the identification and resolution of CLECs' concerns regarding SWBT's interfaces. See, SWBT's Lawson Aff. ¶¶ 353-415. The CMP's effectiveness and SWBT's adherence to it over time were monitored by the Texas Commission, examined by Telcordia, and approved by the FCC. See, Texas Order ¶¶ 105, 110-118. CLECs played a significant role in establishing the CMP, and they are afforded ample opportunity to supply input regarding their needs or concerns, including the ability to halt implementation

²⁷ SWBT MVS Scalability Report, Investigation of SWBT Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 20000 (Tex. PUC filed Aug. 2000).

through a go/no-go vote. See, SWBT's Lawson Aff. ¶¶ 21, 360-366, 381-388, 403-409; Texas Order ¶¶ 110-118.

The Commission finds WorldCom's complaints with the CMP to be unfounded. See, WorldCom's Post Oct. Hearing Comments at 2. To the contrary, the Commission finds that SWBT's response to WorldCom's change requests demonstrates the significant input CLECs have in that process. See SWBT's Lawson Post Oct. Hearing Reply Aff. ¶¶ 3-4.

The Commission further finds that SWBT provides adequate training and support for the use of its OSS. See SWBT's Lawson Aff. ¶¶ 22-66; Texas Order ¶¶ 144-146. SWBT has established an Information Services (IS) Call Center, which is available 24 hours per day, seven days per week, to assist CLECs that have questions or problems regarding electronic access to OSS functions, and offers on-line assistance via its Internet site. See, SWBT's Lawson Aff. ¶¶ 24-32; See, Texas Order ¶ 145.

SWBT's Local Service Center (LSC) and Local Operations Center (LOC) provide CLECs with contact points for issues regarding their ordering, provisioning, maintenance and repair, and billing needs, as well as the execution of complex transactions requiring manual handling. See, SWBT's Lawson Aff. ¶ 23; SWBT's Noland Aff. ¶¶ 19-31.

AT&T and WorldCom allege that SWBT's manual handling at its support centers leads to the introduction of errors into orders. See, e.g., AT&T's Willard Test. at 23-26; WorldCom's Comments at 7-8. But such occurrences do not show a general trend of discrimination. SWBT presented credible evidence that the cited occurrences were exceptions to the overall high-quality performance of SWBT's LSC/LOC, especially in light of the increase in transaction volumes. See generally, SWBT's Noland Reply Aff.; see also, Texas Order ¶ 181; Telcordia Final Report at 95, § 4.5.4.5.

AT&T also complains that SWBT answers calls too slowly at the Alliance LSC. See, AT&T's Willard Test. at 32-33; AT&T's Fettig Test.

at 49-50. The Commission finds that the data in SWBT's performance reports show the contrary, and the Commission is persuaded by SWBT's explanation that results for two months were attributable to an ultimately unsuccessful attempt to improve performance by creating a call center devoted to UNE-P orders. See, SWBT's Noland Reply Aff. ¶¶ 17-18.

At the time of its June 2000 filing, SWBT had offered 11 classes and 14 workshops on using its electronic OSS interfaces, for a total of 40-and-one-half class days of available training, including new workshops to cover high-speed voice and data services and OSS interface integration. See, SWBT's Lawson Aff. ¶¶ 39-51; SWBT's Sparks Aff. ¶¶ 149-165. Of the hundreds of CLEC employees who have received training, 98 percent indicated that they were satisfied with the instruction they received. See, SWBT's Lawson Aff. ¶ 50.

SWBT posts training materials - such as job aids, manuals for using OSS, and troubleshooting guidelines - on its Internet site. See, id. ¶ 40. The training and documentation offered by SWBT allows Missouri CLECs to "understand how to implement and use all of the OSS functions available to them." Texas Order ¶ 146. The Commission finds that SWBT's training offerings are adequate.

Pre-ordering consists of the exchange of information between SWBT and a CLEC, such as customer address verification, feature availability, telephone number assignments, and due date availability. SWBT offers CLECs four primary electronic interfaces to access pre-ordering functions: Easy Access Sales Environment (EASE), Verigate, DataGate, and the industry standard EDI and CORBA. See, SWBT's Lawson Aff. ¶¶ 67-86; M2A Attach. 2 - Ordering and Provisioning - Resale § 2; M2A Attach. 7 - Ordering and Provisioning Unbundled Network Elements §§ 2, 4.

SWBT's OSS are available to CLECs at or above the established 99.5 percent benchmarks and these interfaces provide CLECs with "real time"

access to pre-ordering functions at parity with SWBT's retail operations. See, SWBT's Lawson Aff. ¶¶ 15, 66; SWBT's Dysart Aff. Attach. C (PMs 1-4); SWBT's Dysart Reply Aff. ¶¶ 48-51 and Attach. A (same); SWBT's Dysart Post Nov. Hearing Aff. Attachs. A and B (same). The Commission notes that SWBT also offers access to its service centers, which will perform pre-ordering inquiries manually for those CLECs that have chosen not to employ electronic interfaces and for those complex transactions requiring manual handling. See generally, SWBT's Noland Aff.

CLECs' comments regarding pre-ordering problems are minor and unpersuasive. See, e.g., AT&T's Willard Test. at 19, 21-22, 38. AT&T's concerns with the DataGate interface have been convincingly addressed by SWBT's witnesses. See, AT&T's Willard Test. at 19; SWBT's Lawson Reply Aff. ¶¶ 48-55. Ms. Cullen has persuasively explained that the delay reflected in the October data for the EDI translation protocol metric (PM 1.12) was the result of an intermittent problem that SWBT has since corrected. See, SWBT's Cullen Post Nov. Hearing Aff. ¶¶ 5-6; T. 2984-2985 (SWBT's Cullen).

For the ordering and provisioning of services, SWBT provides CLECs a choice of four primary electronic interfaces: EASE, EDI, LEX, and Southwestern Order Retrieval and Distribution (SORD). See, SWBT's Lawson Aff. ¶¶ 92-115. These interfaces allow CLECs to transmit service requests to SWBT's back-end systems and to obtain order confirmation data, service order status, and service order completion information from SWBT while an order is being provisioned. See, id. ¶¶ 90-91. Once a service order has been generated in SWBT's back-end systems, a firm order confirmation (FOC) is generated and returned to CLECs electronically. See, SWBT's Lawson Aff. ¶¶ 179-181.

AT&T has raised various complaints about FOCs (see, AT&T's Willard Test. at 40-44; AT&T's Fettig. Test. at 34-35), but SWBT's performance for

FOC return in Missouri has met the applicable benchmarks in at least two of the three months from May to July 2000 for nearly every submeasure for which data are available; those submeasures SWBT missed during this three-month period, it met during the subsequent three-month period (August to October 2000). See, SWBT's Dysart Reply Aff. ¶¶ 53-57 and Attach. A (PMs 5, 94); SWBT's Dysart Post Nov. Hearing Aff. ¶ 17 and Attachs. A and B (same); SWBT's Noland Post Nov. Hearing Aff. ¶¶ 3-14. This performance, coupled with the overall good FOC-return performance shown by the same SWBT systems in Texas and approved by the FCC, demonstrates that SWBT is providing, and has the means to continue to provide, timely FOCs to CLECs in Missouri. See, Texas Order ¶ 171.

If an order is unable to flow through to SWBT's back-end systems, an electronic reject notice may be returned to the CLEC. See, SWBT's Lawson Aff. ¶¶ 182-185. SWBT's performance with regard to PM 10.1 (Percentage of Manual Rejects Received Electronically and Returned in Five Hours) fell short of the 97-percent benchmark in each of the months of September, October, and November 2000.

AT&T criticizes the time it takes SWBT to return manual reject notices. See, AT&T's Willard Test. at 33-35; AT&T's Fettig Test. at 38-41. Yet, in Missouri, the mean time to return manual rejects has been significantly shorter than the interval approved by the FCC in Texas. SWBT's Noland Reply Aff. ¶ 41; SWBT's Dysart Reply Aff. ¶¶ 63-65 and Attach. A (PM 11.1); SWBT's Dysart Post Nov. Hearing Aff. Attachs. A and B (same). The average intervals for returning manual rejects to Missouri CLECs were consistently below four hours, and never above 5.7 hours, between May and October, 2000 (see, SWBT's Dysart Reply Aff. Attach. A (PM 11.1); SWBT's Dysart Post Nov. Hearing Aff. Attachs. A and B (same)), whereas the FCC concluded that SWBT had provided Texas CLECs with timely